IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3151 OF 1995

Magnum Investment & Anr. ...Plaintiffs

V/s.

Unit Trust of India & Ors. ...Defendants

.....

Mr.M.S.Rane i/b M/s.H.V.Gala & Co. for Plaintiffs.

None for Defendants.

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CORAM: A.M.KHANWILKAR, J.

JULY 26, 2007.

P.C.

1. None appears for the Defendants, though served. Except Defendant No.9, no other Defendant has filed Written Statement. The Suit has been set down for hearing as Undefended Suit against Defendants 1 to 8 and 10 to 26 respectively in terms of order dated 5th October 2000.

2. In substance, the claim of the Plaintiffs is in relation to shares which have been purchased by the Plaintiffs from respective Defendants about

7300 in respect of three different Companies. The Plaintiffs purchased 6000 Master Shares of the Defendant No.1, 1200 Shares of Defendant No.11 and 100 shares of Defendant No.25. According to the Plaintiffs, the Plaintiffs have paid the entire amount in relation to the said suit shares. The Delivery Memo under which suit shares were delivered to the concerned Companies are pressed into service on behalf of the Plaintiffs to assert that the transaction was complete. However, the stated shares were not transferred in the name of the Plaintiffs inspite of several request letters sent in that behalf. It is in this backdrop, the Plaintiffs have approached this Court for the following reliefs:

> "(a) that it may be declared that the First Plaintiffs are the owners of the Suit Shares, being 6000 Master Shares of the Defendants No.1, 1200 Shares of the Defendants 11 and 100 Shares of the defendant No.25 as per the particulars of the said Shares given in the schedules Exhibits 'A', 'B' and 'C' respectfully to the Plaint and that they are entitled to receive all dividends, bonus, rights and other benefits already accrued or to accrue hereafter rom time to time in respect of the Suit Shares and that they are entitled to have the Suit transferred to and registered in their name on the records of the Defendants No.1, 11 and 25,

respectively and to obtain from the Defendants Nos.1, 11 and 25 duplicate share certificates in respect of the Suit Shares in lieu of the Original Share Certificates, thereof.

(b) for a decree and other against the First Defendants directing them to transfer the Shares mentioned in Exhibit 'A' to the Plaint from the names of the Defendant No.s 3 to 10 to the name of the First Plaintiffs without insisting upon production of the transfer deeds executed by the Defendant Nos.3 to 10 to the name of the First Plaintiffs without insisting upon production of the transfer deeds executed by the Defendant Nos.3 to 10 and register the said Shares in the name of the First Plaintiffs and to issue and deliver to the First Plaintiffs duplicate Share Certificates in respect of the said Shares in lieu of the Original Certificates thereof, and to pay or allow to the First Plaintiffs all Dividends, Bonus, Rights or other benefits already accrued and/or to hereafter accrue from time to time in respect of the said 6000 Master Shares.

(c) For a decree and order against the Eleventh Defendants directing them to transfer the 1200 Shares mentioned in Exhibit - 'B' to the Plaint from the names of the Defendant Nos.13 to 24 to the name of the First Plaintiffs without insisting upon production of the transfer Deeds executed by the Defendant Nos.13 to 24 and register the said Shares in the name of the First Plaintiffs and to issue and deliver to the First Plaintiffs duplicate Share Certificates in respect of the said Shares in lieu of the Original Certificates thereof, and to pay or allow to the First Plaintiffs all Dividends, Bonus, Rights or other benefits already accrued or to hereafter accrue from time to time in respect of the said 1200.

(d) For a decree and order against the Defendant No.25 directing them to transfer the Shares mentioned in Exhibit-‘C’ to the Plaint from the names of their Registered holders to the names of the First Plaintiffs without insisting upon production of the transfer Deeds executed by the Registered holders and register the mentioned in Exhibit-‘C’ to the Plaint in the name of the First Plaintiffs and to issue and deliver to the First Plaintiffs duplicate Share Certificates in respect of the Shares mentioned in Exhibit - ‘C’ to the Plaint, in lieu of the lost certificates thereof and to pay or allow to the First Plaintiffs all dividends, bonus, rights or other benefits already accrued or to hereafter accrue from time to time in respect of the Suit Shares mentioned in Exhibit - ‘C’ to the Plaint.

(e) For a Decree and Order against the Defendants No.3 to 10 to pay to the First Plaintiffs the amounts mentioned against their respective names in Exhibit - ‘P’ to the Plaint and to hand over to the First Plaintiffs all documents relating to any Bonus and/or right Shares and/or other benefits received by them in respect of any of the Shares, mentioned in Exhibit - ‘A’ to the Plaint.

(f) For a Decree and Order against the Defendants No.13 to 24 to pay to the First Plaintiffs the amounts mentioned against their respective names in Exhibit - ‘R’ to the Plaint and to hand over to the Fist Plaintiffs all documents relating to any Bonus and/or right Shares and/or other benefits received by them in respect of any of the Shares mentioned in Exhibit - ‘B’ to the Plaint.

(g) That pending the hearing and final disposal of the Suit for an order and Interim Injunction restraining the First

and Second Defendants from transferring the Shares mentioned in Exhibit 'A' to the Plaint to the name of any persons/s other than the First Plaintiffs and/or from paying or allowing any dividends, bonus, rights or other benefits already accrued but to be declared hereafter or to accrue hereafter from time to time in respect of the said Shares to any person other than the First Plaintiffs and/or to issue or deliver duplicate share certificates in respect of the said Shares in favour of or to any person other than the First Plaintiffs.

(h) That pending the hearing and final disposal of the Suit for an order and Interim Injunction restraining the Eleventh and the Twelve Defendants from transferring the 1200 Share mentioned in Exhibit - 'B' to the Plaint to the name of any person/s other than the First Plaintiffs and/or from paying or allowing any dividends, bonus, rights or other benefits already accrued but to be declared hereafter or to accrue hereafter from time to time in respect of the said Shares to any person other than the First Plaintiffs and/or to issue or deliver duplicate Share Certificates in respect o the said Shares in favour of or to any person other than the First Plaintiffs.

(i) That pending the hearing and final disposal of the Suit, for an order and interim injunction restraining the Defendant Nos.25 and 26 from transferring the 100 Shares mentioned in Exhibit - 'C' to the Plaint to the name of any person/s other than the First Plaintiffs and/or from paying or allowing any dividends, bonus, rights or other benefits already accrued but to be declared hereafter or to accrue hereafter from time to time in respect of the said Shares to any person other than the First Plaintiffs and/or to issue or deliver duplicate Share

Certificates in respect of the said Shares, in favour of or to any person other than the First Plaintiffs.

(j) That pending the hearing and final disposal for the Suit for an order and Interim Injunction restraining the Defendants 3 to 10 their Agents and Servants from transferring, disposing of or, dealing with in any manner whatsoever, any of the 6000 Shares mentioned in Exhibit 'A' to the Plaint and/or from receiving or recovering any Dividend, Bonus, rights or other benefits already accrued or to accrue hereafter in respect of any of the said Shares and/or from applying fro or obtaining duplicate Share Certificates in respect of any of the said Shares and/or exercising any right in respect of any of the said Shares.

(k) That pending the hearing and final disposal for the Suit for an order and Interim Injunction restraining the Defendants 13 to 24, their Agents and Servants from transferring, disposing of or, dealing with in any manner whatsoever, any of the said 1200 Shares mentioned in Exhibit 'B' to the Plaint and/or from receiving or recovering and Dividend, Bonus, rights or other benefits already accrued or to accrue hereafter in respect of the Suit shares and/or from applying for or obtaining duplicate Share Certificate in respect of the said Shares and/or exercising any right in respect of any of the said Suit Shares.

(l) That pending the hearing and final disposal of the Suit the Court Receiver High Court or some other proper and fit person be appointed as receiver of the Suit Shares more particularly mentioned in Exhibits - 'A, B and C' to the Plaint with the direction to the Court Receiver to receive all dividends, bonus, rights and other benefits already accrued or to be

accrued hereafter in respect of the Suit Shares, during the pendency of the suit from time to time and to pay the same over to the First Plaintiffs.

(m) for ad-interim reliefs in terms of prayers (g) to (l) above.

(n) for such other and further reliefs as this Hon'ble Court may deem fit and proper to grant in the fact and circumstances of the case.

(o) the costs of and incidental to the Suit may be provided for."

3. As mentioned earlier, none appears for the Defendants. Except Defendant No.9, no other Defendant has filed Written Statement. Insofar as Defendant No.9 is concerned, the Plaintiffs are not pressing the present Suit and no relief is claimed against the said Defendant. In other words, the Plaintiffs have given up the claim against Defendant No.9. In other words, the Suit shall proceed against 1 to 8 and 10 to 26 only.

4. In support of its case, the Plaintiffs have filed affidavit of evidence sworn by Jiten Jadhavji Chheda dated 3rd April 2007. In this evidence, Plaintiffs have restated the case made out in the Plaint. Besides, the Plaintiffs have

filed affidavit of documents and placed on record all the original documents, on the basis of which the Plaintiffs have sought relief against the Defendants. The Plaintiffs are relying on the extract from the Registrar of Firms, to support the claim that the Plaintiff firm is a registered partnership firm. Plaintiffs have also produced copy of the letters with acknowledgement exchanged with Defendants in respect of the subject matter of the Suit. The Plaintiffs have also produced copy of Schedule of relevant shares of Defendant Nos.1, 11 and 25 respectively. The Plaintiffs have also produced the original two bills from Milan R.Parekh in favour of Plaintiff No.1 which indicates that the Plaintiffs purchased the said shares.

5. The Plaintiffs are also relying on the two confirmation letters dated 24th April 1995 in relation to sale of shares under Bill dated 18th February 1994 and 27th January 1994. The Plaintiffs have also relied on the original consignment note dated 10th March 1994 issued by the courier agency. The Plaintiffs are then relying on the declaration dated 18th March 1994

which states that the stated consignment was booked by the Plaintiffs for Jabalpur on 10th March 1994 through the concerned courier which was duly forwarded to the co-loader ODC Cargo Service connected to Patel On-Boards Couriers Limited (the POBC), Vile Parle, and during the transhipment enroute, the entire bag load of POBC was lost. It also records that FIR has been lodged recording the theft of the entire bag. The original letter sent by the Plaintiffs to the concerned Police Inspector dated 18th March 1994 with due acknowledgement of the concerned Inspector is also produced on record. The Plaintiffs have also produced other letters exchanged with the Defendants to persuade them to transfer the shares in the name of the Plaintiffs from time to time.

6. After going through the case made out in the affidavit of evidence of the Plaintiffs' witness, which case is supported by the documents relied upon by the Plaintiffs, I have no hesitation in taking the view that the Plaintiffs did purchase the suit shares and pay necessary consideration to procure the same. It is, however, during the

transportation by the courier, M/s.Competent Freight Express Courier & Cargo Forwarders, the shares which were sent for transfer, were misplaced. That happened on account of reasons beyond the control of the Plaintiffs.

7. Suffice it to observe that the material on record does establish the case of the Plaintiffs. There is nothing on record which militates against the claim of the Plaintiffs. Perhaps, the Defendants 1 to 8 and 10 to 26 have no plausible explanation to offer, for which reason, they have not chosen to contest the present Suit.

8. In the circumstances, in exercise of powers under Order VIII Rule 10 of the Code of Civil Procedure, 1908, I find that this is a fit case for decreeing the Suit in favour of the Plaintiffs and against Defendants 1 to 8 and 10 to 26 in terms of reliefs prayed in prayer clauses (a) to (f).

9. Accordingly, the Suit is decreed against Defendants 1 to 8 and 10 to 26 in terms of prayer

clauses (a) to (f) with costs.

10. The Court Receiver stands discharged without passing of account, but shall make over the amount received by him from Defendant Nos.1, 11 and 25 by way of shares, bonus shares and dividends in relation thereto received by the Court Receiver from time to time during the pendency of the Suit, if any.

11. Suit is withdrawn as against Defendant No.9.

12. Decree be drawn up accordingly.

13. All concerned to act on an ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.